

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LARRY D. BRUCE, : CASE NO. 1:04 CV 00447
Petitioner, :
-vs- : OPINION AND ORDER GRANTING
MARGARET BRADSHAW, WARDEN, : PETITIONER'S APPLICATION TO
Respondent. : PROCEED IN FORMA PAUPERIS

UNITED STATES DISTRICT JUDGE LESLEY WELLS

Petitioner Larry Bruce ("Mr. Bruce" or "petitioner") filed a petition for a writ of habeas corpus raising three grounds for relief. (Docket No. 1). United States Magistrate Judge George J. Limbert submitted a Report and Recommendation ("R&R") proposing dismissal of Mr. Bruce's 28 U.S.C. § 2254 petition. (Doc. 33). On 28 March 2007 this Court issued an Order reviewing the grounds presented in the R&R for denying Mr. Bruce's petition, adopting the R&R, dismissing the habeas petition, and denying a certificate of appealability. (Docket No. 39). Petitioner has now filed a Notice of Appeal and requests leave to proceed in forma pauperis. (Docket No. 42).

Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who desires to appeal in forma pauperis must file a motion in the district court. An appeal may not be taken in forma pauperis if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). In its 28 March 2007 Order on Mr.

Bruce's habeas petition, this Court denied the issuance of a certificate of appealability. However, the standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith. See United States v. Youngblood, 116 F.3d 1113, 1115 (5th Cir.1997); Foster v. Ludwick, 208 F.Supp.2d 750, 764 (E. D. Mich.2002). Whereas a certificate of appealability may only be granted if a petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed in forma pauperis if it finds that an appeal is being taken in good faith. Id. at 764-65; 28 U.S.C. § 1915(a)(3); Fed. R.App. P. 24(a). "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. Foster, 208 F.Supp.2d at 765. "[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit." Walker v. O'Brien, 216 F.3d 626, 631 (7th Cir.2000). Although the Court has declined to issue a certificate of appealability, the court cannot conclude that Mr. Bruce's claims are frivolous.

Accordingly, the Court will grant Mr. Bruce's Motion for Leave to Proceed on Appeal In Forma Pauperis.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE